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INDONESIA AND EAST TIMOR

UN High Commissioner on Human Rights: Visit to Indonesia and East Timor 4-8 December 1995

Media Briefing

3 December 1995
AI Index: ASA 21/61/95
Distr: SC/CO/GR/PG

INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 8DJ, UNITED KINGDOM

Amnesty International Media Briefing

Visit to Indonesia and East Timor by the UN High Commissioner on Human Rights 4-8 December 1995

Introduction

The United Nations High Commissioner on Human Rights (HCHR) is visiting Indonesia and East Timor for general discussions on human rights from 4 to 8 December. The purpose of the visit is not to conduct human rights investigations. It is believed that the visit will include discussions with representatives of differing views on human rights and that at least two days are expected to be spent in East Timor.

The purpose of this briefing is to provide journalists covering the visit of the HCHR with background information on existing recommendations of United Nations human rights bodies and special rapporteurs which have yet to be implemented by the Indonesian Government.

The importance of the HCHR's visit for the Indonesian Government is clear, particularly as the HCHR has to complete a report for the next session of the Commission on Human Rights in 1996. It is believed that this report will include information concerning his trip to Indonesia and East Timor. Indonesia's Foreign Minister Ali Alatas has already stated that "Indonesia is keen to improve the implementation of human rights, and he [the High Commissioner on Human Rights] is the most senior UN official in charge of human rights". [1]

Amnesty International believes that the Indonesian Government has yet to demonstrate a commitment to improving human rights in Indonesia and East Timor. The mandate of the HCHR is to support and strengthen the human rights mechanisms of the United Nations, mechanisms which have made recommendations concerning the protection of human rights in Indonesia and East Timor. As such, Amnesty International hopes that during his visit, the HCHR will urge the Indonesian Government to implement the existing recommendations of United Nations human rights rapporteurs and thematic mechanisms, and the recommendations of the UN Commission on Human Rights (CHR).

One tangible expression of Indonesia's commitment to the protection of human rights would be the release of all those detained in Indonesia and East Timor for their peaceful human rights and political activities.

United Nation's Human Rights Recommendations and Resolutions: Indonesia's performance

In December 1994 the Special Rapporteur on extrajudicial, summary or arbitrary executions criticised a lack of action by the government in investigating the November 1991 Santa Cruz massacre in Dili,

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[1] Reuters, 26 November 1995.

East Timor. He called for:

- the establishment of a new and independent commission of inquiry into the massacre;
- an invitation for the UN Working Group on Enforced or Involuntary Disappearances to visit East Timor;
- the establishment of a civilian police force;
- full access for human rights non-governmental organisations to East Timor;
- the handing over of jurisdiction on cases of human rights violations by members of the security forces to the civilian judiciary.

The Indonesia Government has not implemented these recommendations and in fact has publicly stated that it rejects them. The government has not since supplied the Special Rapporteur with any further information on the fate of those missing and killed during the Santa Cruz massacre, a request made in the Statement of the Chair of the CHR in 1995 - a statement which the government itself agreed to.

In 1992, the Special Rapporteur on torture, following a visit to Indonesia and East Timor, called on the Indonesia Government to:

- ensure an independent judiciary which should enforce respect for human rights;
- hand over the supervision and legality of arrests and the monitoring of criminal investigation procedures to the Attorney-General's office and the judiciary;
- ensure strict respect of detainees' rights to legal advice;
- ensure that courts dismiss evidence obtained unlawfully;
- repeal the Anti-Subversion Law;
- create a national commission on human rights and an authority, with independent investigative powers, where victims of human rights violations such as torture, can file complaints;
- establish a system of regular visits to all places of detention, including police stations, by an independent authority;
- ensure that officials found guilty of committing or condoning torture are severely punished;
- hand over jurisdiction concerning offences committed by members of the armed forces to civilian courts.

Of these recommendations, only the establishment of a national commission on human rights has been implemented.

UN Commission on Human Rights and Indonesia

In 1993, the CHR expressed deep concern at continuing reports of human rights violations in East Timor and urged the Indonesia Government to:

- account fully for those missing since the Santa Cruz massacre of 12 November 1991;
- bring promptly to justice all members of the security forces responsible for the massacre and related human rights violations;
- ensure that civilian detainees are treated humanely, that any trials meet international standards of fairness, and that those not involved in violent activities be immediately released;
- implement the recommendations contained in the January 1992 report of the UN Special Rapporteur on torture;
- expand access to East Timor for human rights and humanitarian organisations;
- invite four of the UN CHR's human rights monitoring mechanisms to visit East Timor.

Of these recommendations, the Indonesia Government has so far failed to implement the following:

- account fully for those killed and missing after 12 November 1991;
- hold those responsible for the Santa Cruz massacre to account;
- release all prisoners of conscience;
- allow East Timorese in detention access to legal counsel of their choice and a fair trial,
- expand access to human rights organisations;
- invite the Special Rapporteur on torture to again conduct monitoring in East Timor, or the Working Group on Arbitrary Detention and the Working Group on Enforced or Involuntary Disappearances;
- implement fully the recommendations of the Special Rapporteur on torture.

In 1994 and 1995, the Chair of the CHR gave consensus statements on East Timor, both of which expressed concern that the Indonesia Government had failed to fully account for those killed and missing after the Santa Cruz massacre and called on the government to continue its "investigations on those still missing". The 1995 statement also called on the government to implement the recommendations of the Special Rapporteur on extrajudicial, summary or arbitrary executions in his December 1994 report. The Indonesia Government has failed to implement the recommendations of these statements, with the exception of allowing a visit to East Timor by the Special Rapporteur on extrajudicial, summary or arbitrary executions in July 1994.

The Indonesia Government agreed to both these statements.

"Memorandum of Intent" and Technical Cooperation

The HCHR is expected to discuss with the Indonesia Government steps to be taken following the signing of the Memorandum of Intent between the Indonesia Government and the HCHR in October 1994.[2]

The memorandum states:

- that a programme of technical cooperation will be established for Indonesia, "within the framework of the cooperation and coordination between the United Nations High Commissioner for Human Rights/Centre for Human Rights and the Government of the Republic of Indonesia";

- the "contents and the modalities" of the program should be based on an assessment of human rights assistance needs to be conducted by the HCHR and the UN Centre for Human Rights "upon the request of the Government";

- the government should work with the HCHR and the centre in the development of a national plan of action for human rights in Indonesia.

Amnesty International considers that the program of advisory services proposed by the Memorandum raises a number of concerns given that the Indonesia Government has yet to demonstrate a commitment to improving the human rights situation in Indonesia and East Timor. Technical cooperation programs are generally established when there is a clearly demonstrated political will on the part of the government concerned to work towards improving human rights. Amnesty International does not consider that the Indonesia Government has yet demonstrated such a commitment because the government has failed to implement all but a few of the recommendations contained within previous CHR statements and resolutions and has not meaningfully cooperated with UN human rights special rapporteurs and thematic mechanisms.

Amnesty International is not aware of any further action being taken by the Indonesia Government to implement the provisions contained within the "Memorandum of Intent", in particular, the development of a national action plan on human rights. A needs assessment has not been conducted and Amnesty International is not aware of whether the Indonesia Government has yet formally requested this.

The National Commission on Human Rights: Komnas HAM

One of the few recommendations made by UN human rights rapporteurs which the Indonesia Government has implemented is the establishment of a national commission on human rights. The presence of the National Commission on Human Rights *(Komisi Nasional Hak Asazi Manusia - Komnas HAM)* is frequently highlighted by the Indonesian and other governments as evidence of an improvement in the human rights situation in Indonesia and East Timor. Amnesty International

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[2]"Memorandum of Intent between the United Nations High Commissioner for Human Rights/Centre for Human Rights and the Government of the Republic of Indonesia on the mutual agreement to cooperate in the development and implementation of coherent and comprehensive national programmes for the promotion and protection of human rights in Indonesia", 26 October 1994.

acknowledges that the creation of the Commission was a welcome step and that it has contributed in some way to ensuring that a limited number of human rights violations are brought to public attention.

But the presence of the Commission in no way means that full and impartial investigations into allegations of human rights violations are systematically conducted in Indonesia and East Timor. The responsibility for this falls squarely with the Indonesian Government. Limitations on the Commission's power and functions prevent it being a truly effective mechanism for redressing human rights violations. Despite such limitations, any contribution that the Commission can make in promoting and protecting human rights will be curtailed unless the government gives a commitment in practice to act on the findings of the Commission, a commitment which is still sadly lacking.

Amnesty International's concerns regarding the Commission are:

- as established by the Indonesian Government, the Commission's working methods and powers fall short of international standards for national human rights institutions, rendering its findings less than complete. It is not established in law and its mandate and powers are not clearly defined;

- there is no consistency to the cases which the Commission takes up, because its functions have not been clearly defined by the government. It does not always investigate cases of extrajudicial execution or "disappearance" nor does it always take up cases of torture;

- the level of military surveillance in the areas in which the Commission conducts investigations raise concerns about military interference with evidence and intimidation of witnesses;

- the Commission is inadequately resourced, severely limiting the work that it can undertake;

- Komnas HAM never publicly releases its full findings;

- the Indonesia Government does not always act on its findings;

- adverse findings from the Commission, where acted upon, are followed by military trials resulting in investigations and prosecutions being carried out by the body alleged to have committed the violations - the Armed Forces. This is despite the fact that senior army figures provide misleading information about the true circumstances surrounding the army's involvement in human rights violations;

- recent findings of the Commission regarding East Timor did not address human rights violations by members of the security forces.

KEYWORDS: UN COMMISSION ON HUMAN RIGHTS1 /